

**DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS**

In the matter of:

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ADP Case No. 14-00784

Applicant for Public Trust Position

**Appearances**

For Government: Nicole A. Smith, Department Counsel

For Applicant: *Pro se*

October 25, 2017

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**Decision**

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LOKEY ANDERSON, Darlene D., Administrative Judge:

On April 9, 1993, the Composite Health Care Systems Program Office (CHCSPO), the Defense Office of Hearings and Appeals (DOHA), and the Assistant Secretary of Defense for Command, Control, Communications and Intelligence (ASDC3I) entered into a memorandum of agreement for DOHA to provide trustworthiness determinations for contractor personnel employed in Information Systems Positions as defined in DoD Regulation 5200.2-R, Personnel Security Program (Regulation), dated January of 1987.

Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QIP) on September 30, 2013. (Government Exhibit 3.) On October 4, 2016, the Department of Defense (DoD), issued an (SOR detailing the trustworthiness concerns under Guideline F regarding Applicant. The action was taken under Executive Order 10865, *Safeguarding Classified Information Within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 21992), as amended (Directive); and the adjudicative guidelines (AG), effective within the Department of Defense after September 1, 2006.

Based upon a review of the pleadings and exhibits, eligibility for a public trust position is denied.

The SOR in this case was issued under the adjudicative guidelines that came into effect within the DoD on September 1, 2006. Security Executive Agent Directive (SEAD) 4, *National Security Adjudicative Guidelines*, implements new adjudicative guidelines, effective June 8, 2017. All national security eligibility decisions issued on or after June 8, 2017, are to be decided using the new *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AG), as implemented by SEAD 4. I considered the previous adjudicative guidelines, effective September 1, 2006, as well as the new AG, effective June 8, 2017, in adjudicating Applicant's national security eligibility. My decision would be the same under either set of guidelines, although this decision is issued pursuant to the new AG.

### **Findings of Fact**

Applicant is 52 years old and divorced. He is employed with a defense contractor as a Senior Operations Analyst and is seeking to obtain access to sensitive information in connection with this employment.

### **Guideline F - Financial Considerations**

The Government opposes Applicant's request for access to sensitive information on the basis of allegations set forth in the Statement of Reasons (SOR). The following findings of fact are entered as to each paragraph and guideline in the SOR:

The Government alleges that Applicant is ineligible for a public trust position because he is financially overextended and at risk of having to engage in illegal acts to generate funds. There are eleven delinquent debts, totaling in excess of \$41,000, set forth in the SOR. Applicant admitted each of the allegations under this guideline, except 1.d., which he is disputing. (Government Exhibit 2.) Applicant's credit reports dated October 17, 2013 and August 9, 2016, which include information from all three credit reporting agencies, reflects that Applicant remains indebted to each of the creditors listed in the SOR. (Government Exhibits 5 and 6.) Applicant has been working for his current employer since August 2006.

Applicant and his wife divorced in January 2010. He currently pays his former spouse both child support and alimony. Applicant also incurred approximately \$41,000 in delinquent consumer and medical debt he claims derived during the course of his marriage. Applicant claims that he is making payments toward three of the debts, but fails to provide documentation to reflect the payments. The following debts remain owing:

1.a. A judgment was filed against the Applicant in July 2014 in the approximate amount of \$3,902. The judgment remains unpaid. Applicant claims that the debt is in the process of repayment by agreement with the debt collector.

1.b. A debt owed to a creditor for a medical account placed for collection in the approximate amount of \$308. This debt remains owing.

1.c. A debt owed to a creditor for an account placed for collection in the approximate amount of \$3,857. This debt remains owing.

1.d. A debt owed to a creditor for a medical account placed for collection in the approximate amount of \$537. Applicant denies this debt and claims he disputed it because no services were provided.

1.e. A debt owed to a creditor for a medical account was placed for collection in the approximate amount of \$323. This debt remains owing.

1.f. A debt owed to a creditor for a medical account was placed for collection in the approximate amount of \$1,632. This debt remains owing.

1.g. A debt owed to a bank was placed for collection in the amount of approximately \$4,189. This debt remains owing.

1.h. A debt owed to a bank was charged off in the approximate amount of \$12,243. This debt remains owing. Applicant claims that the debt is in the process of repayment by agreement made with the debt collector.

1.i. A debt owed to a creditor was charged off in the approximate amount of \$6,138. This debt remains owing.

1.j. A debt owed to a store for an account that was charged off in the approximate amount of \$2,643. This debt remains owing.

1.k. A debt owed to a department store for an account placed for collection in the approximate amount of \$5,528. This debt remains owing. Applicant claims that this debt is in the process of repayment by agreement made with the debt collector.

Applicant has failed to provide any documentary evidence to show that he has started payments toward the debts set forth in allegations 1.a., 1.h., and 1.k., or what the current balance of the debts maybe. He failed to provide documentation to support his dispute with the creditor in allegation 1.d. Furthermore the remaining nine that he admits have not been addressed, whatsoever.

## Policies

When evaluating an applicant's national security eligibility and suitability for a public trust position, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the AG list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluation an applicant's eligibility for a position of trust.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in AG ¶ 2 describing the adjudication process. The administrative judge's over-arching adjudicative goal is a fair, impartial, and commonsense decision. The entire process is a conscientious scrutiny of a number of variables known as the "whole person-concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for access to [sensitive] information will be resolved in favor of national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the Applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." The Applicant has the ultimate burden of persuasion as to obtaining a favorable trustworthiness decision.

A person applying for a position of trust seeks to enter into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants national security eligibility. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard sensitive information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of sensitive information.

Section 7 of Executive Order (EO) 10865 provides: "[a]ny determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." (See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).)

## **Analysis**

### **Guideline F, Financial Considerations**

The trustworthiness concerns relating to the guideline for financial considerations are set out in AG ¶ 18, which reads in pertinent part:

Failure to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds.

AG ¶ 19 describes five conditions that could raise security concerns and may be disqualifying in this case:

- (a) inability to satisfy debts;
- (b) unwillingness to satisfy debts regardless of the ability to do so;
- (c) a history of not meeting financial obligations;
- (e) consistent spending beyond one's means or frivolous or irresponsible spending, which may be indicated by excessive indebtedness, significant negative cash flow, a history of late payments or of non-payment, or other negative financial indicators; and
- (f) failure to file or fraudulently filing annual Federal, state, or local income tax returns or failure to pay annual Federal, state, or local income tax as required.

Applicant went through a divorce in 2010, about seven years ago. He walked away from the marriage with \$41,000 in debt. Since then, he has not shown a pattern of financial responsibility. Although he states that three debts are being paid he has not submitted receipts or any other documentation to prove that he has made payments. There is insufficient evidence in the record to show that he has made any payments. Applicant is excessively indebted and has not paid his debts. These facts establish prima facie support for the foregoing disqualifying conditions, and shift the burden to Applicant to mitigate those concerns.

The guideline includes several conditions in AG ¶ 20 that could mitigate the security concerns arising from Applicant's alleged financial difficulties:

- (a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;
- (b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;
- (c) the individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control;
- (d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts;
- (e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue;
- (f) the affluence resulted from a legal source of income; and
- (g) the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

It is recognized that circumstances beyond his control, namely, a divorce affected his finances. However, AG ¶ 20(b) does not provide full mitigation here. Applicant's divorce was in 2010. Seven years have passed and the debts remain owing. Applicant has provided no documentation to demonstrate that he has acted responsibly under the circumstances, nor has he received or is he receiving counseling, and there are no clear indications that his financial problems are being resolved or are under control, or that he has initiated a good-faith effort to repay or otherwise resolve his debts. There is nothing in the record to show that he has done anything effectively to resolve any of the debt. All of the delinquent debts set forth in the SOR remain delinquent. None of the mitigating conditions are applicable. From the evidence in the record, Applicant has not acted responsibly under the circumstances. In this case, none of the mitigating conditions are applicable. Accordingly, I find against the Applicant under Guideline F (Financial Considerations). The record fails to establish any mitigation of financial trustworthiness concerns under the provisions of AG ¶¶ 20(a) through 20(g).

## Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a position of trust by considering the totality of the applicant's conduct and all relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d):

(1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

According to AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a position of trust must be an overall commonsense judgment based upon careful consideration of the applicable guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all pertinent facts and circumstances surrounding this case. Applicant is a mature adult, who has failed to demonstrate that he has taken reasonable and effective action to resolve the financial issues in the SOR. His financial problems continue as there is no evidence that they have been resolved.

Overall, the record evidence leaves me with serious doubt as to Applicant's judgment, eligibility, and suitability for a position of trust. He has not met his burden to mitigate the trustworthiness concerns arising under the guideline for Financial Considerations.

## Formal Findings

Formal findings For or Against the Applicant on the allegations in the SOR, as required by Paragraph 25 of Enclosure 3 of the Directive are:

Paragraph 1:	Against the Applicant.
Subpara. 1.a.	Against the Applicant.
Subpara. 1.b.	Against the Applicant.
Subpara. 1.c.	Against the Applicant.
Subpara. 1.d.	Against the Applicant.
Subpara. 1.e.	Against the Applicant.
Subpara. 1.f.	Against the Applicant.
Subpara. 1.g.	Against the Applicant.
Subpara. 1.h.	Against the Applicant.
Subpara. 1.i.	Against the Applicant.

Subpara.	1.j.	Against the Applicant.
Subpara.	1.k.	Against the Applicant.

### **Decision**

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue a public trust position for the Applicant.

Darlene Lokey Anderson  
Administrative Judge